DOCKET NO. CV-16-6020436-S	:	SUPERIOR COURT
DONNA CIMARELLI-SANCHEZ, ADMINISTRATRIX OF THE ESTATE OF MAREN VICTORIA SANCHEZ	:	JUDICIAL DISTRICT OF ANSONIA-MILFORD
VS.	:	AT MILFORD
CITY OF MILFORD BOARD OF EDUCATION, ET AL.	:	JANUARY 2019

MEMORANDUM OF DECISION

STATEMENT OF THE CASE

I

Procedural Background

The plaintiff in this action, Donna Cimarelli-Sanchez, Administratrix of the Estate of Maren Victoria Sanchez, instituted this action against the following defendants: the City of Milford Board of Education (Board), the City of Milford (City), Christopher Plaskon (Plaskon), David A. Plaskon, and Kathleen E. Plaskon. The plaintiff filed a withdrawal of the action against Plaskon, David A. Plaskon, and Kathleen E. Plaskon (no. 166). Pending before the court is the motion for summary judgment filed by the City and the Board, who hereafter will be collectively referred to as the defendants.

The plaintiff is the "[a]dministratrix of the Estate of her daughter, Maren Victoria Sanchez [(Sanchez)], who was stabbed to death on April 25, 2014 by [the] defendant Cristopher Plaskon while attending Jonathan Law High School, a public high school in the City of [Milford]." Compl., Ct. 1, ¶ 1. The first and second counts of the complaint assert wrongful death claims against the Board and the City respectively under General Statutes § 52-572. These counts allege that Sanchez's injuries and death were caused by the negligence of one or more

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employees of the Board or the City in failing to comply with the mandatory reporting or monitoring obligations established by the practices, policies, and procedures of the Board or the state. On May 12, 2016, the defendants filed an answer to the plaintiff's complaint, denying the plaintiff's negligence claims and asserting special defenses. On December 12, 2016, the plaintiff filed a general denial of the defendants' special defenses.

The defendants filed their motion for summary judgment on April 6, 2018. In support of the motion, the defendants filed a supporting memorandum of law and documents including, deposition transcripts and answers to requests to admit. On June 1, 2018, the plaintiff filed a memorandum of law in opposition to the defendants' motion, also with supporting documents including deposition transcripts, an expert's affidavit, and answers to requests to admit. In further support of their motion, the defendants filed a reply brief on June 29, 2018. On July 23, 2018, the court heard oral argument on the motion. The court continued its consideration of the motion until September 7, 2018 in order to allow the parties time to engage in further settlement discussions. The parties reported that these efforts were unsuccessful. For the following reasons, the defendants' motion for summary judgment is **denied**, the court concluding that the defendants have failed to demonstrate that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law.

II

Factual Background

The following facts are established on the basis of the pleadings. The City, with or through the Board, is responsible for providing public education to residents of the City and for "maintaining control of and providing for the safety of students in the public schools in the City,

including Jonathan Law High School." Compl., Ct. 1, ¶2. The Board is "responsible for adopting and implementing practices, policies and procedures for the provision of public education in [the City] and, in particular, practices, policies and procedures to protect and safeguard students in the Milford public school system, including at Jonathan Law High School." Compl., Ct. 1, ¶ 5. "Students at Jonathan Law High School are prohibited by [the Board's] mandatory policies and procedures from possessing a weapon on school premises, and any teacher, administrator, counselor or security personnel at Jonathan Law High school" has certain reporting requirements upon learning that a student has a weapon in his or her possession. Compl., Ct. 1, ¶ 23. "On April 25, 2014, [Plaskon] stabbed [Sanchez] repeatedly in a stairway foyer on the high school premises, causing her to sustain grievous injuries resulting in her death on that date." Compl., Ct. 1, ¶ 30.

The following additional information is provided from the parties' submissions on the summary judgment motion. On November 8, 2013, Sanchez went to the office of her guidance counselor, Marguerite Raymo. Sanchez informed Raymo that she was worried that her friend, Plaskon, might be suicidal because of comments that he made indicating that he might harm himself. Defs.' Ex. B, Raymo Dep., pp. 18-19.[1] Raymo asked Plaskon's guidance officer, Barbara Kovacs, to join them. According to Raymo, Sanchez repeated to the two of them what she had told Raymo. Id., 29. Raymo testified that Sanchez did not say anything about Plaskon having a knife or indicating that he was cutting himself. Id., p. 19. On the other hand, Kovacs testified in her deposition that during their conversation with Sanchez in Raymo's office,

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[1]Unless otherwise indicated, the plaintiff's exhibits are contained in court filing no. 182, and the defendants' exhibits are contained in court filing no. 178. The page numbers referenced in this memorandum correspond with the pages of these documents as filed with the court.

Sanchez expressed her concern to both of them that Plaskon was cutting himself. Defs.' Ex. C, Kovacs' Dep., pp. 95-96.

Kovacs continued the conversation with Sanchez alone in her office. According to Kovacs' deposition testimony, Sanchez told her that she was concerned Plaskon might hurt himself because during conversations they had the previous day, Plaskon told her that he did not "want to go on," that "if he wasn't walking around, he would kill himself," and that he was cutting himself. Defs.' Ex. C, Kovacs' Dep., pp. 96-99, 107. After determining that Plaskon was not in school that day, Kovacs spoke to Suzanne Meyer-Farrell, the school's social worker, and to Plaskon's father about what Sanchez reported. Kovacs testified that she advised the father, David Plaskon, about Sanchez's report about his son. He indicated that he and his wife had kept their son home that day because he seemed a bit off. He also indicated that Chris was in private counseling with Dr. Jonathan Swift, and that they would meet with Swift to follow up on the report. Although David Plaskon recalls this conversation with Kovacs, he denies that Kovacs ever informed him about Sanchez reporting that Plaskon was cutting himself. Defs.'s Ex. I, David Plaskon Dep., pp. 256, 271. According to David Plaskon, he first became aware of Plaskon's cutting behavior when he observed knife cuts on Plaskon's wrist in April 1994, weeks before the assault on Sanchez. Id., pp. 256, 263-265.

On or about the Friday after Kovacs met with Sanchez, she and Meyer-Farrell met with Plaskon. They advised him that a student had reported concerns about him harming himself. Plaskon indicated that he had no such intentions and that he had already met with his therapist about the matter. None of the evidence submitted by either party indicates that Plaskon ever informed any school official that he had any thoughts or intentions about injuring himself or

anyone else.

According to Kovacs, sometime after they spoke to Plaskon, she and Meyer-Farrell advised the assistant principal, Paul Cavanna, about Sanchez's report.[2] Cavanna testified at his deposition that neither Kovacs nor Meyer-Farrell said anything to him about Sanchez's concerns about Plaskon. Pl.'s Ex. F, Paul Cavanna Dep., pp. 118-120. The high school's principal, Francis Thompson, also testified at his deposition that the he was unaware of Sanchez's report about Plaskon. See Pl.'s Ex. B, Thompson Dep., p. 19.

The Milford Public School District has promulgated a Suicide Prevention and Intervention Procedure (SPIP) that involves a response by a clinical intervention team (CIT) when a report is made that a student has expressed suicidal ideation or engaged in a suicide attempt. The CIT consists of the school principal, school nurse, and one of the following: the school psychologist, school social worker, or school guidance counselor.[3]

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[2]The social worker, Meyer-Farrell, testified that she believes that she and Kovacs talked to Cavanna about Sanchez's report, but she has no specific recollection of the conversation. Defs.' Ex. C, Meyer-Farrell Dep., pp. 204-05.

[3]Section 5.0 of the "procedure" section of the SPIP provides the following in relevant part:

> 5.1 Response to any suicidal ideation or attempted suicide by a student, whether or not a medical emergency, the following procedure will be undertaken:
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> 5.1.1 When students are identified as possibly at risk for suicide, the CIT immediately is contacted. The CIT is then responsible for collectively assessing the student's health and mental status and the level of risk or lethality involved. When a referral is made to the team, team members will immediately confer to:
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> 5.1.1.1 Share relevant data about the student and/or situation;
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> 5.1.1.2 Develop a preliminary assessment plan; and
>
> 5.1.1.3 Identify specific responsibilities of team members in the assessment process.
>
> 5.1.2 A member of the CIT will contact the parent/guardian and the person who identified the student as possibly at risk for suicide as soon as possible to

The CIT is "responsible for collectively assessing the student's health and mental status and the level of risk or lethality involved." Defs.' Ex. H, p. 239. There is no dispute that the SPIP involves mandatory, non-discretionary procedures required to be implemented in response to a student expressing suicidal ideation. There also is no dispute that all the procedures were not

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share all pertinent information.

5.1.3 If the student remains at the school, under no circumstances should he/she be allowed to be alone or go home alone. The student must be released only to a parent/guardian or other responsible adult.

5.1.4 A staff member will notify the parent/guardian and request that they come to the school immediately. The following points should be covered in the meeting with the parent/guardian:

5.1.4.1 The seriousness of the situation.

5.1.4.2 The need for immediate outside professional help.

5.1.4.3 The need for continued monitoring.

5.1.4.4 A request for parent/guardian to sign a "Transfer of Confidential Information Release form (PPS-F012) between the school and the facility to which the student will be taken, the student's therapist and other individuals as appropriate.

5.1.4.5 The parent/guardian will review and sign the "Exit to Release to Parent/Guardian" form (PPS-F010).

5.1.4.6 A member of the CIT will contact parent/guardian immediately regarding what action occurred to date.

5.1.5 If reasonable attempts to reach the parent/guardian, or other responsible adult in whose custody the student may be released are not successful, the case will be treated as a medical emergency and arrangements will be made to contact the Milford Police Department.

5.1.6 The parent/guardian will meet with administration and member(s) of CIT to discuss intervention strategies and to view and sign the "Re-etry" form (PPS-F011).

5.1.7 Upon return to school, the child may be referred to the planning and placement team process.

5.1.8 If, as a result of suicidal activity, a need exists for changes in the student's program, the school's planning and placement team will convene and consult with the student's mental health professional, the parent(s)/guardian(s), appropriate outside facility staff members and, if feasible, the student to plan the student's educational program. When necessary, continued supervision will be implemented."

used in response to Sanchez's reported concerns about Plaskon.[4] Particularly, the CIT collectively was not notified and did not convene. Consequently, the CIT did not assess Plaskon's "health and mental status and the level of risk or lethality involved," prepare a "preliminary assessment plan" and meet with his parents to discuss "intervention strategies" as required under the SPIP. Defendant's Ex. H, p. 239-40.

Cavanna testified that if the mandatory procedures of the SPIP had been utilized after a

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[4]The plaintiff claims that in responding to Sanchez's report regarding Plaskon's suicidal ideation, the defendants violated the SPIP in the following ways:

> "-The school's Clinical Intervention Team ('CIT')–including the school Principal and school nurse – was never notified of Maren's report, as required by § 5.1.1 of the Policy.
> -The CIT never undertook to assess Christopher's mental state and level of risk for lethal conduct, as required by §§ 5.1.1.1 and 5.1.1.2 of the Policy. Likewise, the CIT team members did not 'share relevant data about the student and/or situation;'did not 'develop a preliminary assessment plan;' and did not 'identify specific responsibilities of team members in the assessment process.' . . .
> -No in-person interview with Christopher's parents was requested or conducted to explain, *inter alia,* 'the seriousness of the situation,' and 'the need for continued monitoring;' or to request permission to speak with Christopher's therapist, as required by § 5.1.4 of the Policy. Nor were Christopher's parents advised of 'all pertinent information' (*i.e.*, the report of his cutting behavior) concerning their son's condition and behavior, as required by Policy §5.1.2.
> -No Action Plan was ever developed or implemented to respond to Christopher's situation and to provide for Christopher's safe return to school and for his continued monitoring to assure it was safe for him and others that he be permitted to remain in school, as required by §5.1.1.2 of the Policy.
> -No intervention strategy was ever coordinated with Christopher's parents, as required by § 5.1.6 of the Policy.
> -No communication with Christopher Plaskon's outside therapist was put into place, nor was any review of his mental health treatment or records ever undertaken, as required by § 5.1.1 of the Policy.
> -No Re-Entry Plan was ever formulated, as required by § 5.1.6 of the Policy." Pl.'s Mem., p. 15.

report that Plaskon was exhibiting suicidal ideation involving cutting behavior, a plan would have been discussed with the parents to monitor his access to knifes, or anything else that he could use to hurt himself, both at home and at school. Pl.'s Ex. F, Cavanna Dep., pp. 138-39. Cavanna also testified that in utilizing the mandatory procedures, a response to Sanchez's report would have included an inquiry to determine whether cutting behavior was occurring, and if so, where this behavior was taking place. More specifically, for example, a question warranting investigation would have been whether any such behavior was occurring on or off of school property, and particularly whether a knife was being used, because possession of a knife on school property is prohibited. See id., pp. 152-55.[5]

The court observes that in regard to the reported concern that Plaskon may have been engaged in cutting behavior, neither party provides a complete or accurate presentation of the evidence. For example, although the plaintiff states that "Kovacs failed to tell David Plaskon that the report [from Sanchez] included information that [Plaskon] had been cutting himself"; Pl.'s Mem., p. 13; the evidence on this issue is actually conflicting because Kovacs testified that she did give this information to him; Defs.' Ex. C, Kovacs' Dep., pp. 123-25; and David Plaskon testified that she did not. Defs.' Ex. C, David Plaskon Dep., pp. 256, 271.

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[5]In her objection to the defendants' summary judgment motion, the plaintiff submitted a psychological evaluation report prepared by Dr. Peter Ash. Dr. Ash was retained by Plaskon's parents after the murder and in connection with Plaskon's criminal trial. According to Dr. Ash, Plaskon reported that between January 2014 and April 2014, he used a knife to cut himself, sometimes in response to voices telling him to hurt himself in this manner; that some of the cutting behavior occurred in the school bathroom; and that four or five of his friends knew about his cutting behavior. (Pl.'s Ex. L, Dr. Ash Report, p. 254.) Plaskon also reported that he attempted suicide twice in January 2014. Id. The plaintiff contends that the discovery of Plaskon's emotional difficulties associated with this conduct and appropriate interventions were reasonably likely through the defendants' utilization of the required SPIP procedures.

Similarly, the defendants' statement that the "relevant evidence overwhelming suggests that [Sanchez] did not use the word [cutting] or report anything about 'cutting' on November 8, 2013" during her conversation with Kovacs; Defs.' Mem., p. 4, n. 6; is a definite mischaracterization of the evidence because Kovacs unequivocally and repeatedly testified during her deposition that Sanchez was concerned about Plaskon because he said that "he was cutting and wanted to hurt himself." Defs.' Ex. C, Kovacs Dep., p. 94; see also pp. 97-99, 123-25, 138. Kovacs also informed an investigating police officer that Sanchez had reported that Plaskon was cutting himself. Pl.'s Ex. G, Milford PD Report, p. 183.

As will be articulated further below, these factual disputes about whether Sanchez reported a concern about Plaskon cutting himself, and if so, whether Kovacs so advised Plaskon's father and the school's vice-principal, are issues of such significance and materiality that they alone warrant denial of the defendants' summary judgment motion for the following reason. In regard to the issues of duty of care and proximate cause as raised by the defendants' motion, a jury may or may not conclude that there is a significant difference between a student merely expressing suicidal ideation, as compared to a student expressing suicidal ideation associated with cutting behavior, because the latter situation may deserve and warrant an even greater degree of concern and responsiveness on the part of school officials. The court certainly cannot resolve these factual questions and make a determination about the parties' dispute regarding them as a matter of law through a summary judgment motion.

To support her objection to the defendants' summary judgment motion, the plaintiff has filed an affidavit of an expert, Dr. Robert Kinscherff, Ph.D, J.D. In Dr. Kinscherff's opinion, there is a causal relationship between the school officials' failure to utilize the mandatory

provisions of the SPIP and Sanchez's death. Dr. Kinscherff summarizes his opinion as follows: "Based on my training and experience, and my familiarity with the Milford [SPIP] policies and protocol, it is my opinion that it is highly likely that proper compliance by [high school] employees with the mandatory provisions of the Milford school system's policies would have been successful in preventing Christopher Plaskon's murderous assault on Maren Sanchez on April 25, 2014. Further, had the [SPIP] protocol been followed, it is highly likely that Christopher Plaskon's trajectory towards the lethal attack resulting in the death of Maren Sanchez on April 25, 2014 would have been effectively disrupted through familiar and effective strategies of identification, assessment, monitoring, clinical treatment, and school-based adjustments to planning and education. As a result, it is my opinion that it is highly likely that the lethal attack by Christopher Plaskon upon Maren Sanchez in April 2014 would not have occurred had the [SPIP] protocol been implemented as was mandated by school policy." Court Document Filing no. 183, Aff. Dr. Kinscherff, p.92.

The defendants have not provided an opinion of another expert disputing Dr. Kinscherff's conclusions. Rather, the defendants contend that Dr. Kinscherff's opinions are based on speculative and attenuated facts, and therefore, they are unreliable and should be rejected. This court has held that when considering a substantive pretrial motion, an expert's opinion may be rejected when it is based on contingent, conjectural information. *Bridgeport Harbor Place, I, LLC* v. *Ganim*, Superior Court, judicial district of Waterbury, Complex Litigation, Docket No. X-06-CV-040184523-S (Jan. 25, 2008, *Stevens, J.*), aff'd, 131 Conn.App. 99, 30 A.3d 703 (2011). "The probative nature and reliability of an expert's opinion is only as valuable as the facts on which the opinion is based. An expert opinion that is premised on speculative

assumptions and indeterminable contingencies results in testimony that is unreliable and unhelpful to the jury because the ultimate opinion itself would be speculative and conjectural." Id. As articulated below, the court agrees with plaintiff that the evidence on which Dr. Kinscherff bases his opinions is sufficiently substantive to support his conclusions and to warrant a jury trial.

DISCUSSION

I

A

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party." (Internal quotation marks omitted.) *Bozelko* v. *Papastavros*, 323 Conn. 275, 282, 147 A.3d 1023 (2016). "The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact. . . . As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent. . . . When documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit

documents establishing the existence of such an issue. . . . Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § [17–45]." (Internal quotation marks omitted.) *Ramirez* v. *Health Net of the Northeast, Inc.*, 285 Conn. 1, 11, 938 A.2d 576 (2008).

"Summary judgment procedure is especially ill-adapted to negligence cases . . . [when] . . . the ultimate issue in contention involves a mixed question of fact and law, and requires the trier of fact to determine whether the standard of care was met in a specific situation." (Internal quotation marks omitted.) *Michaud* v. *Gurney*, 168 Conn. 431, 434, 362 A.2d 857 (1975). However, "[t]he application of the standard of care to the particular facts becomes a question of law . . . when the mind of a fair and reasonable person could reach but one conclusion." *Smith* v. *Leuthner*, 156 Conn. 422, 424-25, 242 A.2d 728 (1968).

B

"[M]unicipal officials are immunized from liability for negligence arising out of their discretionary acts in part because of the danger that a more expansive exposure to liability would cramp the exercise of official discretion beyond the limits desirable in our society . . . In contrast, municipal officers are not immune from liability for negligence arising out of their ministerial acts . . . . This is because society has no analogous interest in permitting municipal officers to exercise judgment in the performance of ministerial acts." (Internal quotation marks omitted.) *Silberstein* v. *54 Hillcrest Park Associates, LLC*, 135 Conn. App. 262, 270-71, 41 A.3d 1147

(2012). Consequently, whereas General Statutes § 52–557n (a) (2) (B) explicitly shields a municipality from liability for damages to person or property caused by the negligent acts or omissions which require the exercise of judgment or discretion, under § 52–557n (a) (1) (A), a municipality may be liable for the conduct of its employees or agents for negligently performing a ministerial act. "[M]inisterial refers to a duty which is to be performed in a prescribed manner without the exercise of judgment or discretion." (Citations omitted.) *Grignano* v. *Milford*, 106 Conn. App. 648, 654, 943 A.2d 507 (2008). "[E]vidence of a ministerial duty is provided by an explicit statutory provision, town charter, rule, ordinance or some other written directive." *Wisniewski* v. *Darien*, 135 Conn. App. 364, 374, 42 A.3d 436 (2012).

As previously stated, there is no dispute that the SPIP involves mandatory procedures implicating ministerial duties on the part of school officials and that all the required procedures of the SPIP were not utilized by school officials in response to Sachez's report that Plaskon was exhibiting suicidal ideation. The plaintiff's complaint alleges that the school officials' failure to exercise these mandatory responsibilities was negligent and a proximate cause of Sanchez's death.

II

The defendants first argue that they are entitled to summary judgment because as a matter of law the plaintiff cannot establish that they owed Sanchez a duty of care. "The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury. . . . Duty is a legal conclusion about relationships between individuals, made after the fact, and [is] imperative to a negligence cause of action. . . . Thus, [t]here can be no actionable negligence . . . unless there exists a cognizable duty of care . . . In

general, anyone who does an affirmative act is under a duty to others to exercise the care of a reasonable [person] to protect them against an unreasonable risk of harm . . . arising out of the act." (Citations omitted; internal quotation marks omitted.) *Doe* v. *Saint Francis Hospital & Medical Center*, 309 Conn. 146, 174-75, 72 A.3d 929 (2013).

"The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual. . . . Although it has been said that no universal test for [duty] ever has been formulated . . . our threshold inquiry has always been whether the specific harm alleged by the plaintiff was foreseeable to the defendant. The ultimate test of the existence of the duty to use care is found in the foreseeability that harm may result if it is not exercised. . . . By that is not meant that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury [that] resulted was foreseeable. . . . [T]he test for the existence of a legal duty entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case." (Internal quotation marks omitted.) *Mirjavadi* v. *Vakilzadeh*, 310 Conn. 176, 191, 74 A.3d 1278 (2013).[6]

Specifically in regard to school children, the law is unquestionably settled that children

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[6]Thus, the evaluation of whether a duty of care exists involves two considerations, one involving foreseeability and one involving public policy. *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 174-75. As the defendants only raise the first prong concerning foreseeability, the second prong involving policy considerations will be only generally discussed.

require special consideration when dangerous conditions are involved and that school officials have a duty to protect school children from reasonably anticipated dangers. The defendants do not contend to the contrary. "[S]tatutory and constitutional mandates demonstrate that school children attending public schools during school hours are intended to be the beneficiaries of certain duties of care. Statutes describe the responsibilities of school boards and superintendents to maintain and care for property used for school purposes . . . Statutes also describe the responsibilities of school children to attend school. The presence of the [plaintiff's decedent child] on the school premises where [she] was injured was not voluntary. [The child] at the time of the accident . . . was statutorily compelled to attend school and to obey school rules and discipline formulated and enforced pursuant to statute. [Her] corresponding entitlement to a public education has constitutional underpinnings in this state . . .

"At least during school hours on school days, when parents are statutorily compelled to relinquish protective custody of their children to a school board and its employees, the superintendent [of schools] has the duty to protect the pupils in the board's custody from dangers that may reasonably be anticipated. . . . As a matter of policy, this conclusion comports with our case law that has traditionally recognized that children require special consideration when dangerous conditions are involved." (Citations omitted; footnotes omitted.) *Burns* v. *Board of Educ. of City of Stamford*, 228 Conn. 640, 648-50, 638 A.2d 1 (1994). Particularly, in the present case, the defendants concede that the SPIP imposes mandatory, non-discretionary duties and responsibilities on school officials when informed that a student is experiencing suicidal ideation. Also, as previously stated, there is no dispute that the salient provisions of the SPIP were not followed in this case.

Thus, in the context of the defendants' general duty to protect school children in their care from reasonably foreseeable dangers, and their more specific obligations under the SPIP to respond to the report of Plaskon's suicidal ideation, the defendants maintain that they owed no duty of care to Sanchez on the ground that her murder was unforeseeable. Specifically, the defendants argue that "[n]o reasonable fact finder could conclude that, upon receiving the information reported by Sanchez on November 8, 2013, Raymo, Kovacs, Meyer-Farrell or any reasonable employee in their positions under those circumstances, could potentially have conceived of, let alone recognized that anything short of absolute, strict compliance with very potentially applicable provision in [the SPIP] would pose a foreseeable risk that Plaskon would bring a knife to school and use it to murder Maren Sanchez, or anyone else at Law, on April 25, 2014." (Emphasis removed.) Defs.' Mem., p. 19. Indeed, the defendants contend that in evaluating whether a duty of care exists here "expert or lay witness testimony to the effect that 'when a student has suicidal ideation he poses a risk not only to himself but potentially to other students he may come into contact with' is not material." (Emphasis omitted.) Defs.' Reply, p. 5. The court finds the defendants' arguments untenable.

The court first must reject an underlying proposition of the defendants' argument that the failure to comply with the SPIP in this case is irrelevant or immaterial to evaluating the defendants' duty of care because this argument ignores or mischaracterizes the nature of the duty at issue. The quintessential quality of the absence of a duty of care is that at the time of the conduct in question, a defendant is without any obligation whatsoever to act for the benefit or care of a plaintiff. Such a position cannot be rationally maintained by the defendants here. After becoming aware that a student is expressing suicidal ideation, school officials owe a duty of care

to this student, and they also have a duty to respond to this information in a reasonable manner necessary for the care, security, or protection of other students. In any given case, there certainly may be disputes about the adequacy or reasonableness of the school's response to such information, but as evidenced by the mandatory, non-discretionary aspects of the SPIP, the court cannot conclude, as apparently advanced by the defendants here, that school officials are without any duty to respond to such information for the benefit of other students or even staff.[7]

The defendants' more specific argument that the legal definition of 'duty' cannot be met by the plaintiff because no school official could either conceive or recognize that violation of the SPIP "would pose a foreseeable risk that Plaskon would bring a knife to school and use it to murder Maren Sanchez"; Defs.' Mem., p. 19; warrants little discussion because the defendants have clearly framed the legal question regarding foreseeability too narrowly. Their framing of the issue is too narrow because the specific facts of this case have been improperly incorporated into the legal inquiry. The question is not whether the defendants could reasonably anticipate that Plaskon would bring a knife to school and use it to murder Sanchez. The appropriate question is whether the defendants could reasonably anticipate that harm of the "general nature" of that suffered was likely to occur. *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 175. In this regard, the Supreme Court's decision in *Ruiz* v. *Victory Properties, LLC*, 315

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[7]The court notes that the defendants' position that no duty of care was owed to Sanchez under the facts presented here is not only contrary to the opinion of the plaintiff's expert, Dr. Kinscheerff, but is also inconsistent with the deposition testimony of the school's principal. Pl.'s Ex. B, Thompson Dep., pp. 24-26, 29; see generally *Gauvin* v. *New Haven*, 187 Conn. 180, 186-87, 445 A.2d 1(1982) (testimony of municipal official can establish nature of duty). When asked, Principal Thompson agreed that a student experiencing suicidal ideation poses a risk not only to himself but also to other students he may come in contact with, and this risk is one of the reasons the school has to access such a student "both for the student's safety [and] for the safety of students and teachers in the school." Pl.'s Ex. B, Thompson Dep., pp. 24-25.

Conn. 320, 102 A.3d 381 (2015), is controlling and on point as the court explained that an argument such as the defendants' "would transform the general nature of the harm into the specific way in which the harm occurred." Id., 335.[8]

Certainly, cases exist where the injury is so remote or attenuated to a defendant's conduct that "foreseeability" under a duty of care analysis cannot be found. See, e.g., *Brooks* v. *Powers*, 328 Conn. 256, 274, 178 A.3d 366 (2010). Contrary to the defendants' position, however, the court cannot conclude, as a matter of law, that it would by irrational or unreasonable for a jury to find that a student may be exposed to a risk of harm when school officials do not respond to her report that another student with whom she has a friendship has threatened to hurt himself, especially when these concerns are allegedly associated with the friend engaging in cutting

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[8]In *Ruiz* v. *Victory Properties*, 315 Conn. 320, 102 A.3d 381 (2015), the Supreme Court rejected the defendant landlord's claim that it owed no duty of care to a child who was hit in the head by a heavy piece of concrete taken by another child from debris in a backyard of an apartment building and dropped from a third-floor balcony. The defendants contend that rather than *Ruiz*, the Supreme Court's decision in *Brooks* v. *Powers*, 328 Conn. 256, 178 A.3d 366 (2010) is controlling on the issue of duty in the present case. The court rejects this argument.

In *Brooks*, the defendant police officers did not respond properly to a report that the plaintiff's decedent was standing in a field in a heavy rainstorm and appeared to be in need of medical attention. The decedent was not injured in the field, but drowned many hours later in a body of water one-half mile away from the field. The court concluded that the connection between the defendant's conduct and the harm suffered by the plaintiff was too attenuated to establish foreseeability, explaining that "the record is devoid of any facts or allegations tying [the decedant's] drowning to conditions during the storm or to her presence in the field." Id., 274. In *Brooks*, there was no reasonable, factual connection between the defendants' failure to respond properly to the decedent's presence in a field and her later drowning in a body of water, whereas, as discussed above, there is a clear factual connection between a school official's failure to respond properly to a report of a student exhibiting suicidal ideation and a potential risk of harm to the reporter. In explaining its decision, the court in *Brooks* even explained that the facts of the case involved an adult woman and not a child being in the field, and provided the example that "if [the decedant] had been a child rather than an adult, the defendants quite likely would have been under a duty to take immediate steps to ensure the child's safety." Id., 275. In short, the court concludes that the facts of *Brooks* are distinguishable, and the facts and reasoning of *Ruiz* are more applicable and controlling.

behavior. Although the existence of a duty is ordinarily a legal question for the court, the question becomes a jury question when reasonable people can disagree on whether the defendants, by their conduct, should have anticipated the risk of harm. See *Ruiz* v. *Victory Properties, LLC*, supra, 315 Conn. 336.

Moreover, in evaluating whether a duty of care exists, the fact that Sanchez's actual injury may be severe or grievous does not preclude the injury from falling "squarely along this continuum of harm." *Ruiz* v. *Victory Properties, LLC*, supra, 315 Conn. 336. "[As] long as harm of the general nature as that which occurred is foreseeable there is a basis for liability even though the manner in which the accident happens is unusual, bizarre or unforeseeable." *Pisel* v. *Stamford Hospital*, 180 Conn. 314, 333, 430 A.2d 1 (1980); see also *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 587, 717 A.2d 215 (1998) (Berdon, J., dissenting) (focus of foreseeability inquiry should be "on the general nature of the harm and not the specific manner in which the injury occurred or the conduct of a third party"); *Figlar* v. *Gordon*, 133 Conn. 577, 581-82, 53 A.2d 645 (1947) (foreseeability "does not mean that one charged with negligence must be found actually to have foreseen the probability of harm or that the particular injury which resulted was foreseeable, but the test is, would the ordinary man in the defendant's position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result" [internal quotation marks omitted]).

The defendants' arguments to the contrary are rejected. The defendants, for example, argue extensively that Kovacs and Meyer-Farrell responded adequately to Sanchez's report by developing and executing their own "responsive plan." Defs.' Mem., p. 20-21. This argument fails for two reasons. First, the argument itself involves disputed issues of fact that require trial

adjudication. For example, there is no dispute that their "responsive plan" was not as detailed or expansive as the SPIP, and therefore, its adequacy is clearly a disputed issue. Another example is that a factual dispute exists as to whether Kovacs informed David Plaskon about "all" of the "information and concerns reported" by Sanchez as part of the plan; id.; because during his deposition David Plaskon testified that Kovacs told him nothing about any reported cutting behavior. Secondly, as previously discussed, in determining whether a duty of care exists, the analytical focus is less on the sufficiency of the defendants' response and more on whether, based on the totality of circumstances, the defendants had a duty to respond or take any action at all.

In summary, the court must reject the defendants' argument that they are entitled to summary judgment based on their position that they owed no duty of care to Sanchez.

III

As previously stated, in addition to proving the existence of a duty of care, the plaintiff must also prove causation. See *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 174 ("the essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury" [internal quotation marks omitted]). As compared to the issue of duty, the issue of causation in this action presents a somewhat closer question involving slightly different difficulties.[9]

[9]Although duty and causation are separate legal concepts, the manner in which they diverge or conflate has drawn much legal and academic debate both before and after the seminal case of *Palsgraf* v. *Long Island Railroad Co.*, 248 N.Y. 339,162 N.E. 99, reargument denied, 249 N.Y. 511, 164 N.E. 564 (1928). In *Palsgraf*, Judge Cardozo articulated the view that in a negligence action, the concept of foreseeability is focused on the duty owed to the plaintiff in that negligence is "a mater of relation between the parties, which must be founded upon the foreseeability of harm to the person in fact injured." W. Keeton et al., Prosser and Keeton on the Law of Torts (5th Ed. 1984) § 43, p. 285. On the other hand, Judge Andrews in dissent maintained that a duty of care is a more general proposition and is imposed on people to act

"Legal cause is a hybrid construct, the result of balancing philosophic, pragmatic and

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reasonably for the safety and protection of others, and through this proposition, he, in turn, advanced the view that the concept of forseeability is more appropriately considered as part of a causation analysis. Our Supreme Court has not expressly or explicitly adopted either of the formulations advanced by Judge Cardozo or Judge Andrews, although authorities suggest that Connecticut law appears more in line with the opinion of Judge Andrews. See *Freddo* v. *The Access Agency, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-000555736-S (Jan. 23, 2001, *Corradino, J.*) (29 Conn. L. Rptr. 275); D. Wright et al., Connecticut Law of Torts (3d Ed. 1991) § 33, p. 60 ("theory of Judge Andrews would appear to be the dominant theory today in Connecticut").

Under Connecticut law, the legal definitions of "duty of reasonable care" and "proximate cause" both include the concept of "foreseeability," although these definitions describe this concept differently. As previously stated, Connecticut courts state that the ultimate test for the existence of a duty of care is the "foreseeability" that a harm may result if care is not exercised in the act at issue. *Mirjavadi* v. *Vakilzadeh*, 310 Conn. 176, 191-92, 74 A.3d 1278 (2013). For this purpose, foreseeability is described by whether an ordinary person in the defendant's position would anticipate that the "general nature" of the harm suffered was likely to result. Id., 192. In comparison, an established description of proximate cause is that it involves a consideration of "whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence." *Merhi* v. *Becker*, 164 Conn. 516, 521, 325 A.2d 270 (1973). In evaluating foreseeability under this formulation, the test for proximate cause is satisfied by proof that the defendant's "conduct [was] a substantial factor in bringing about" the plaintiff's injury. (Internal quotation marks omitted.) Id.

For the purpose of adjudicating the defendants' motion for summary judgment in the present case, the court limits its discussion of this controversy involving foreseeability by reemphasizing the following. In addition to the element of damages, the plaintiff also has the burden of proving both a violation of a duty of care and causation in order to prevail because these concepts are additional, separate components of her negligence claim. Furthermore, while as a general rule a jury may find the existence of a duty of care and decline to find proximate cause, the actual analysis of a defendant's duty may be virtually indistinguishable from the analysis of causation when the defendant's alleged wrongful conduct is, as in the present case, not the direct cause of the plaintiff's injuries. As explained in *Ruiz* v. *Victory Properties, LLC*, supra, 315 Conn. 345, "[i]n negligence cases . . . in which a tortfeasor's conduct is not the direct cause of the harm, the question of legal causation is practically indistinguishable from an analysis of the extent of the tortfeasor's duty to the plaintiff. . . . Therefore, [when the court has] already determined the question of whether a duty was owed by the defendant, it would be repetitive to engage in an analysis concerning proximate cause." (Internal quotation marks omitted.); accord *Lodge* v. *Arett Sales Corp.*, 246 Conn. 563, 574, 717 A.2d 215 (1998) ("[i]t is impractical, if not impossible to separate the question of duty from an analysis of the cause of the harm when the duty is asserted against one who is not the direct cause of the harm"); see also *First Federal Savings & Loan Assn. of Rochester* v. *Charter Appraisal Co.*, 247 Conn. 597, 604, 724 A.2d 497 (1999) (same).

moral approaches to causation. . . . The first component of legal cause is causation in fact. Causation in fact is the purest legal application of . . . legal cause. The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct. . . . The second component of legal cause is proximate cause . . . . [T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries. . . . Further, it is the plaintiff who bears the burden to prove an unbroken sequence of events that tied his injuries to the [defendants' conduct]. . . . The existence of the proximate cause of an injury is determined by looking from the injury to the negligent act complained of for the necessary causal connection. . . . This causal connection must be based upon more than conjecture and surmise. . . . An actual cause that is a substantial factor in the resulting harm is a proximate cause of that harm. . . . The finding of actual cause is thus a requisite for any finding of proximate cause. . . . Because actual causation, in theory, is virtually limitless, the legal construct of proximate cause serves to establish how far down the causal continuum tortfeasors will be held liable for the consequences of their actions." (Citations omitted; internal quotation marks omitted.) *Theodore* v. *Lifeline Systems Co.*, 173 Conn. App. 291, 309-310, 163 A.3d 654 (2017). "The fundamental inquiry of proximate cause is whether the harm that occurred was within the scope of foreseeable risk created by the defendant's negligent conduct." *First Federal Savings & Loan Assn. of Rochester* v. *Charter Appraisal Co.*, 247 Conn. 597, 604, 724 A.2d 497 (1999).

The defendants argue that the plaintiff cannot establish either cause in fact or proximate cause. In summary, the defendants contend that as a matter of law the plaintiff cannot prove actual cause because "the facts prohibit a reasonable conclusion that the material events would have transpired differently if there was full compliance with the applicable provisions of the

[SPIP]. Put another way, plaintiff simply cannot establish that, but for any ministerial negligence claimed, Plaskon would not have committed this murder [and, therefore,] [t]he 'causation in fact' burden cannot be met as to any claimed ministerial breaches of the [SPIP]." Defs.' Mem., p. 25. Specifically as to proximate cause, the defendants maintain that too many unknown, contingent variables exist to establish probable cause because of the "illogical leaps and guess-work necessary to get from point A – the reporting of concern by [Sanchez] that [Plaskon] might want to harm or kill himself, which [Plaskon] denied immediately and never admitted – to point B – the murder of [Sanchez] by [Plaskon] with a steak knife he was unknown to ever possess on school property, six months later, for reasons that remain an utter mystery and were unforeseeable to everyone." (Emphasis omitted.) Defs.' Mem., p. 32. The court is unpersuaded.

An undisputed, fundamental purpose of the mandatory procedures of the SPIP is to accomplish a thorough and comprehensive investigation of a suicide report. The primary goal of such an investigation is to acquire the information to help provide effective counseling or therapeutic intervention to a student who may be experiencing emotional or psychological difficulties. Thus, the causation question is not merely whether the use of the SPIP procedures would have operated to avoid Sanchez's murder. The more accurate question is whether the use of the SPIP procedures would have accomplished a positive intervention in the psychological and cognitive problems being experienced by Plaskon, which in turn would have accomplished a positive impact on his emotional stability, his behavior, and his threat to others. The defendants' position is that whether such positive interventions may have been achieved by using the SPIP procedures involves pure speculation and conjecture. Although the court agrees with the defendants that a finding of causation should not effectively "convert the imperfect vision of

reasonable foreseeability into the perfect vision of hindsight"; *Burns* v. *Gleason Plant Security, Inc.*, 10 Conn. App. 480, 486, 523 A.2d 940 (1987); the court also agrees with the plaintiff that the issue of causation as raised under these particular circumstances is sufficiently substantive to require resolution by a jury rather than by the court through summary disposition. This conclusion is buttressed by some of the precise arguments made by the defendants.

A critical problem with the defendants' causation analysis is that the defendants do not squarely or candidly address the evidence about Plaskon's cutting behavior. As previously stated, according to Kovacs' testimony, Sanchez's reported concern was that Plaskon indicated that he was threatening to kill himself and that he was cutting himself. The defendants, on the other hand, question whether Sanchez reported anything to Kovacs about cutting behavior, and even if she did, they contend that such a report has no materiality. See Defs.' Mem., p. 4, n. 6 ("relevant evidence overwhelming suggests that [Sanchez] did not use the word [cutting] or report anything about 'cutting' on November 8, 2013" during her conversation with Kovacs). On the basis of this position, the defendants make various arguments.

For example, the defendants contend that the plan executed solely by Kovacs and Meyer-Farrell, without utilization of the SPIP, was fully adequate and sufficient. However, the jury may reject the defendants' position and find that Sanchez did report cutting behavior, and if so, a further factual question would arise about whether Kovacs' fully communicated Sanchez's report to anyone. Contrary to Kovacs' testimony, David Plaskon and Cavanna both deny that she advised them about any reported cutting behavior. Thus a substantial factual question exists about the adequacy of the efforts of Kovacs and Meyer-Farrell if Sanchez's report indeed revealed suicidal ideation associated with cutting behavior, and their plan primarily involved

asking Plaskon if he made remarks about harming himself without any questions about this behavior and without any communication about such behavior to the father or the assistant principal.

Similarly, the defendants contend that "there is no evidence that Plaskon engaged in [cutting behavior] until 2014 at the earliest; and there is no evidence to suggest that anyone had actual knowledge that he had in fact engaged in such conduct until a few weeks before the murder." Defs.' Mem., p. 32. Kovacs' testimony, however, indicates that Sanchez reported a concern about this behavior to her in 2013, and an undisputed fact is that no investigation of any such behavior was done under the mandatory procedures of the SPIP to discover such behavior which was allegedly occurring.[10] The defendants also place significant emphasis on the fact that in 2013, when Sanchez made her report, Plaskon was under the care of a therapist, Dr. Swift, but there is no evidence that Dr. Swift was advised about any cutting behavior and, in turn, that he had the opportunity to address the significance of any such report during his sessions with Plaskon.

In summary, Sanchez's report that Plaskon was exhibiting suicidal ideation was an indication of an emotional problem sufficient to trigger the mandatory procedures of the SPIP,

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[10]In her objection, the plaintiff further questions the basis of the defendants' claim that no evidence about Plaskon's cutting behavior existed prior to April 2014 and that no material or relevant events occurred during the six months between Sanchez's report and her subsequent death. According to the plaintiff, "contrary to defendants' assertion, a great deal of 'material conduct occurred' during those six months, including . . . the fact that [Plaskon] had unilaterally stopped seeing his therapist; that he was experiencing auditory hallucinations in which voices told him to hurt other people; that, in dreams, a figure resembling himself told him to hurt people; that he suffered from acute depression; that he twice attempted suicide; that he was regularly bringing a steak knife to school so he could cut himself; and that he repeatedly told classmates the he 'wouldn't mind if [Sanchez] was dead." Plaintiff's Memorandum, p. 41.

including appropriate consultation or communication with Plaskon's parents and therapist, as well as the preparation of an assessment plan and intervention strategies. Similarly, if Sanchez's report included concerns about Plaskon cutting himself, this report would have been sufficient to trigger concerns within the province of the mandatory procedures of the SPIP on whether this behavior was occurring, and if so, where it was happening and whether a knife was involved because, as Cavanna explains, if a knife was so involved, protective intervention and monitoring would have been warranted in the home and at the school. Contrary to the defendants' position, the court cannot conclude as a matter of law that a failure to utilize the mandatory procedures of the SPIP in response to a report of a student experiencing emotional conditions allegedly involving a knife is either irrelevant or purely speculative in its causal relationship to the student's subsequent assaultive behavior emanating from emotional conditions and involving a knife.

The law is settled that "[t]he issue of proximate causation is ordinarily a question of fact for the trier. . . . Conclusions of proximate cause are to be drawn by the jury and not by the court. . . . It becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for a reasonable disagreement, the question is one to be determined by the trier as a matter of fact." (Internal quotation marks omitted.) *Ruiz* v. *Victory Properties, LLC*, supra, 315 Conn. 345. The court agrees with the plaintiff that the defendants' causation arguments raise matters for which there is room for reasonable disagreement, and therefore, they are matters to be determined by the jury after a trial.

Because the issue of causation is so particularly fact driven, the cases relied on by the defendants are helpful, but nevertheless distinguishable and not controlling. As compared to the

facts of the present case, some of the cases relied on by the defendants do not involve ministerial duties, and therefore, they do not involve a consideration of the continuum of harm reasonably flowing from a failure to perform mandatory, non-discretionary acts. Additionally, the plaintiff contends that utilization of the mandatory procedures of the SPIP more probably than not would have had a positive, ameliorative affect on Plaskon's emotional stability, and in turn, on his subsequent assaultive tendencies. The defendants, on the other hand, rely on a number of cases where the alleged negligence does not relate to a defendant's failure to engage in conduct specifically directed at impacting the actions of the third-party actor.

For example, the defendants rely on *Harris* v. *City of New Haven Bd. of Educ.*, Superior Court, judicial district of New Haven, Docket No. CV-09-6004180-S (March 12, 2013, *Fisher, J.*), where the minor plaintiff was sexually assaulted when she and classmates left school premises without permission and went to a private residence where the assault occurred. This case involved a ministerial duty requiring school officials to call the parent when a student leaves or is absent from school without permission. The court rejected the minor plaintiff's claim that the failure to call her mother about the student's absence from school was a proximate cause of her injury. In *Harris*, although a ministerial duty was involved, the alleged wrongful conduct was not directly connected to impacting the conduct of the assaulter, but was primarily directed to the failure to communicate with the student's mother.

Similarly, in *Medcalf* v. *Washington Heights Condominium Assn., Inc.*, 57 Conn. App. 12, 747 A.2d 532, cert. denied, 253 Conn. 923, 754 A.2d 797 (2000), the plaintiff was criminally assaulted by a third-party while waiting for her friend to let her into an apartment building. The court rejected the plaintiff's claim against the condominium association alleging that the

condominium association's failure to maintain the intercom system was a proximate cause of her injury. *Medcalf* did not involve a defendant's failure to perform a ministerial act, and again, the alleged wrongful conduct was not directly connected to impacting the conduct of the assaulter, but was related to a failure to maintain the intercom system.

The defendants also cite *Doe* v. *Manheimer*, 212 Conn. 748, 563 A.2d 699 (1989) and *Alexander* v. *Vernon*, 101 Conn. App. 477, 923 A.3d 748 (2007), to support their position. In *Manheimer*, the Supreme Court rejected the plaintiff's claim that the defendant's failure to clear an overgrowth of grass and bushes was a proximate cause of her injuries when a third party forced the plaintiff into the overgrowth to conceal his assault on her. In *Alexander*, the Appellate Court rejected the plaintiff's claim that the defendant's failure to attempt to locate and arrest the third party was a proximate cause in the decedent's murder. In both of these cases, the courts concluded that the alleged causal relationship between the wrongful conduct and the assaultive behavior was too speculative and conjectural to support a finding of causation. In comparison to these cases, however, the court finds the case *Ruiz* v. *Victory Properties*, supra, 315 Conn. 320, to be more applicable and closer to the point.

In *Ruiz*, the defendant landlord was negligent in failing to maintain an area of the property where children played. A child removed a piece of concrete weighing eighteen pounds from the play area, carried it to a third floor apartment of the building and dropped the concrete from a window or balcony hitting a minor on the head. The defendant moved for summary judgment on the ground that the accumulation of the debris in the backyard was neither the direct nor proximate cause of the plaintiff's injury. The trial court agreed. The Supreme Court held that the trial court's granting of the motion for summary judgment was error.

In *Ruiz*, as in the present case, although the parties agreed that the conduct of a third party juvenile was the direct and substantial cause of the injuries, and a jury reasonably could conclude that the third party bore the brunt of the responsibility for the injuries, the law is well established that "[t]he injury resulting from the breach of duty need not be the direct or immediate result of the wrongful act; if it is probable and a natural result, that is according to the operations of natural laws, it is enough. . . . The mere fact that the act of another person concurs, co-operates or contributes, in any degree whatever in producing the injury, is of no consequence. . . . [I]n no case is the connection between an original act of negligence and an injury actually broken if a [person] of ordinary sagacity and experience, acquainted with all the circumstances, could have reasonably anticipated that the [direct cause of the harm] might, not improbably but in the natural and ordinary course of things, follow [the] act of negligence." (Internal quotation marks omitted.) *Ruiz* v. *Victory Properties, LLC*, supra, 315 Conn. 346; see also, *Merhi* v. *Becker*, 164 Conn. 516, 325 A.2d 270 (1973) (court found that defendant's failure to provide adequate security personnel was proximate cause of injury directly caused by third party striking plaintiff with car); *Lombardi* v. *Wallad*, 98 Conn. 510, 517-18, 120 A.2d 291 (1923) (court found defendant's failure to monitor trash can fire was a proximate cause to injury directly caused by child accidentally setting another child on fire).

IV

The defendants' last argument is based on the doctrine of superseding cause. Specifically, the defendants contend that Sanchez's injuries and death were caused by the superseding criminal acts of Plaskon for which they cannot be held liable. For reasons similar to those already addressed, the defendants' arguments based on superseding cause fail because a

material issue of fact exists as to whether the harm intentionally caused by Plaskon was within the scope of the risk created by the defendants' failure to comply with the mandatory procedures of the SPIP.

The doctrine of superseding cause has been addressed extensively by Connecticut courts. A superseding cause may be defined as "an act of a third person . . . which by its intervention prevents the actor [or the defendant] from being liable for harm to another which his antecedent negligence is a substantial factor in bringing about." (Citation omitted; emphasis omitted;) *Snell* v. *Norwalk Yellow Cab, Inc.*, 172 Conn. App. 38, 58, 158 A.3d 787, cert. granted, 325 Conn. 927, 169 A.2d 232 (2017); cf. *Barry* v. *Quality Steel Products, Inc.*, 263 Conn. 424, 820 A.2d 258 (2003) (holding that under Connecticut law doctrine of superseding cause is inapplicable when the subsequent intervening act is based on negligence of a third party).

Thus, the general rule has been stated as follows: "[t]he act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized . . . that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime." (Emphasis omitted; internal quotation marks omitted.) *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 178. Consequently, "[w]here the negligent conduct of the actor creates or increases the risk of a particular harm and is a substantial factor in causing that harm, the fact that the harm is brought about through the intervention of another force does not relieve the actor of liability, except where the harm is intentionally caused by a third person *and is not within the*

scope of the risk created by the actor's conduct." (Citation omitted; emphasis in original; internal quotation marks omitted.) Id., 177.[11]

On the basis of this established law, Plaskon's criminal conduct could act as a cause superseding the defendants' alleged negligence if his actions cannot be viewed as being within the scope of risk created by the defendants' conduct. For the reasons previously discussed, whether Plaskon's criminal act was within the scope of the risk created by the school officials' failure to comply with the mandatory provisions of the SPIP presents a substantial, material issue of disputed fact that should not be resolved by the court on a summary judgment motion and should be resolved at a trial after the jury's consideration of the evidence.[12]

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[11]The court also notes that the high school's special custodial relationship with Sanchez and Plaskon may also be a factor in evaluating the application of the superseding cause doctrine as argued by the defendants here. "[O]ne who takes custody of another person may have a duty to protect that person from the intentional misconduct of a third person . . . In such cases, however, there is no duty to control the conduct of the third party unless, in light of the facts, the defendant knows or should know of the necessity and opportunity for exercising such control. . . . This is so because, in the absence of facts from which the defendant reasonably could anticipate the need to control the conduct of the third party, there would be no justification for holding the defendant responsible for failing to take steps to prevent any harm inflicted on the plaintiff by the third party. Moreover, whether a duty of protection would extend to criminal misconduct by a third party in any given case will depend on whether, under all of the circumstances, the defendant had a sufficient basis for anticipating such criminal misconduct." (Citations omitted; footnotes omitted; internal quotation marks omitted.) *Doe* v. *Saint Francis Hospital & Medical Center*, supra, 309 Conn. 181-83.

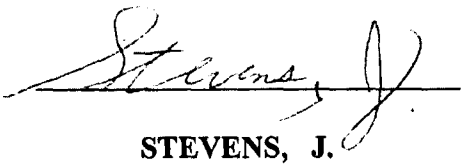
"Indeed, one of the comments to § 314 A of the Restatement (Second), which covers special relationships giving rise to a duty to aid or protect when an entity voluntarily takes custody of a child, notes that "[t]he duty to protect the [child] against unreasonable risk of harm extends to risks arising out of the [entity's] own conduct . . . [as well as] to risks arising . . . *from the acts of third persons, whether they be innocent, negligent, intentional, or even criminal.*" (Emphasis added.) 2 Restatement (Second), supra, § 314 A, comment (d), p. 119." (Internal quotation marks omitted.) Id., 206.

[12]Although the defendants also cited the discretionary function limitation on municipal liability under General Statutes § 52-557n (a) (2) (B) in support of their summary judgment motion, this argument was withdrawn by defense counsel at oral argument.

CONCLUSION

Therefore, for these reasons, the court denies the defendants' motion for summary judgment on the ground that the defendants have failed to demonstrate that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law.

So ordered this 4th day of January 2019.



STEVENS, J.